

**IN THE SUPREME COURT  
STATE OF MISSOURI**

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**IN RE:** )  
 )  
**FRANK ARTHUR CONARD,** ) **Supreme Court #SC93318**  
 )  
**Respondent.** )

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**RESPONDENT'S BRIEF**

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**STATEMENT OF JURISDICTION**

Respondent agrees with Informant that this Court has jurisdiction over this matter pursuant to Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040, R.S.Mo. (2000).

## **STATEMENT OF FACTS**

### **PROCEDURAL HISTORY & KEY DATES**

May 30, 2000	Judicial Reprimand
February 16, 2011	Admonition – Fees and Safekeeping Property Violations
May 29, 2012	Information (McClelland)
June 29, 2012	Respondent's Answers to Information
July 25, 2012	Appointment of Disciplinary Hearing Panel
October 24, 2012	Amended Information (McClelland & Ritter)
November 1, 2012	Order of Continuance and Leave to File First Amended Information
November 19, 2012	Respondent's Answer to Amended Information
January 8, 2013	Notice of Hearing
March 1, 2013	Disciplinary Hearing Panel Decision adopting Joint Stipulation of Facts, Joint Proposed Conclusion of Law and Joint Recommendation for Discipline
March 11, 2013	Respondent's Acceptance of the Disciplinary Hearing Panel's Decision
March 27, 2013	Informant's Acceptance of the Disciplinary Hearing Panel's Decision
July 25, 2013	Record submitted

## **BACKGROUND**

I concur with Informant's Background Statement and respectfully state the following; these are not intended as a full and complete account but as a supplement.

I was admitted to practice law in the State of Missouri on the 4<sup>th</sup> day of September, 1976. I practice in the County of St. Charles, and my office is located in the City of St. Peters.

I received my bachelor's degree with honors from the University of Northeastern, and Juris Doctorate from Suffolk University in Boston, Massachusetts. After completion of my formal education, I worked at my Private Law Firm in Harvester, Missouri.

During the approximate 37 year period of time that I have been actively practicing law, I had no disciplinary incidents during the first 22 years. On the 16<sup>th</sup> day of December, 1994, I was elected to the bench of the 11<sup>th</sup> Judicial Circuit where I presided over the Family Court until 2000. After leaving the bench in 2000, I returned to my private practice in the City of St. Peters, County of Charles, Missouri.

In 2004, I was again elected to the bench, this time in the Cottleville Municipal Division in St. Charles County, Missouri where I acted as the municipal judge for approximately five years, until 2009, and now I serve as the conflicts judge for the Cottleville Municipal Division.

I now practice in my Private Law Firm, Law Offices of Frank Conard, P.C., throughout the greater St. Louis area.

Aside from taking pride in practicing law, socially I spend my time doing various goods for our community. Just to name a few, I was on the Board of Directors of the Family

Advocacy and Community Training ( F.A.C.T. ) between 2003 and 2010. F.A.C.T. is a non-profit agency that works to ensure every child and young adult in St. Charles, Lincoln, and Franklin County has the best educational opportunities possible, family support and access to community resources, regardless of their individual abilities, and reach out into our community to provide disability and mental health awareness and mediation.

Twenty-two years ago, I became the proud founder of No Hunger Holiday after deciding to buy Thanksgiving dinners for some families who were in financial need in St. Charles County, Missouri. With the help of hundreds of volunteers who gather Tuesday before the Thanksgiving Holiday, we are able to serve over 18,000 families with a meal they can enjoy with their families in their own home. Each year this event has continued to grow and today, it includes Lincoln and Franklin Counties.

I am also a member of the Lions Club and the Harvester Knights of Columbus.

Personally, I have always believed there was a community duty that we all share, and if everybody does his or her part, it is pretty easy and rewarding.

Last I want to state that my intentions were never to break the law and this is certainly a lesson learned.

### **DISCIPLINARY HISTORY AND RESPONDENT'S STATEMENT**

I, the Respondent, herein regretfully admit to having a disciplinary history, and further state that I have taken care of the February 16, 2011 violation Rule 4-1.5(c), a rule concerning contingent fees, 4-1.15(c), a safekeeping property rule concerning deposits and withdrawals into a client trust account, and 4-1.15(f), a safekeeping property rule concerning maintaining and preserving client trust account records. Since the 2011 violation, I have established and properly maintained a client trust account.

I, the Respondent, accept and regret that my actions violated the Rules of Professional Conduct. Further, I admit to Informants' statement of my prior disciplinary on May 30, 2000 where I received a judicial reprimand for violating Article V, Section 24 of the Constitution of the State of Missouri and Supreme Court Rule 2, Canons 1, ( a judge shall uphold the integrity and independence of the judiciary), 2A (a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), 2B ( a judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment), 3B(2) ( a judge shall be faithful to the law and maintain professional competence in it), 3B(7) (a judge shall accord to every person who has a legal interest in a proceeding the right to be heard according to law), and 4(G) ( a judge shall not practice law).

**POINTS RELIED ON**

**I.**

**IN COUNT I, I THE RESPONDENT, VIOLATED RULE 4-1.5 IN MY REPRESENTATION OF THE DAUGHTER BY (A) FAILING TO COMMUNICATE TO DAUGHTER THE SCOPE AND REPRESENTATION AND THE BASIS OR RATE OF THE FEE AND EXPENSES FOR WHICH SHE WOULD BE RESPONSIBLE WHEN I ENTERED INTO A CONTINGENCY FEE AGREEMENT WITH HER AND (B) FAILING TO PUT INTO WRITING AND HAVING MS. MCCLELLAND SIGN A CONTINGENCY FEE AGREEMENT; I VIOLATED RULE 4-4.2 BY COMMUNICATING WITH MS. MCCLELLAND REGARDING HER ABUSE OF PROCESS CLAIM AGAINST MR. KRUSE, KNOWING HER TO BE REPRESENTED BY ANOTHER LAWYER WITHOUT THE CONSENT OF THE OTHER LAWYER AND/OR AUTHORIZATION FOR THE SAME BY LAW. I ACCEPT AND REGRET THAT MY ACTIONS VIOLATED THE RULES OF PROFESSIONAL CONDUCT AS STATED ABOVE.**

Rule 4-1.5, Rules of Professional Conduct

Rule 4-4.2, Rules of Professional Conduct

**POINTS RELIED ON**

**II.**

**IN COUNT I, I THE RESPONDENT, VIOLATED RULES 4-1.7 AND 4-1.9 BY ENGAGING IN A CONFLICT OF INTEREST BETWEEN SUCCESSIVE CLIENTS IN THAT (A) I REPRESENTED BOTH DAUGHTER AND FATHER IN TIMES WHEN THEIR INTEREST WERE DIRECTLY ADVERSE; AND (B) I REPRESENTED DAUGHTER AFTER HAVING REPRESENTED FATHER IN A SUBSTANTIALLY RELATED MATTER WHERE DAUGHTER'S INTERESTS WERE MATERIALLY ADVERSE TO THOSE OF FATHER; IN COUNT II AS STATED BY THE INFORMANT, I VIOLATED RULE 4-1.7 BY ENGAGING IN A CONFLICT OF INTEREST BETWEEN SUCCESSIVE CLIENTS IN THAT (C) I REPRESENTED MR. RITTER PRIOR TO REALIZING THAT THERE WAS A SIGNIFICANT RISK THAT MY REPRESENTATION WOULD BE MATERIALLY LIMITED. I FURTHER STATE THAT, I ACCEPT AND REGRET THAT MY ACTIONS VIOLATED THE RULES OF PROFESSIONAL CONDUCT AS STATED ABOVE AND FURTHER STATE THAT**

**THE ONLY REASON I CONTINUED THEIR REPRESENTATION  
WAS BECAUSE THE HONORABLE JUDGE ON THE  
MCCLELLAND MATTER RULED THAT “IT WAS NOT A  
CONFLICT OF INTEREST” FOR ME TO REPRESENT BOTH  
THE FATHER AND THEN THE DAUGHTER; IT MY NEVER  
MY INTENTION TO VIOLATE ANY RULES OF HIS  
COURT.**

**POINTS RELIED ON**

**III.**

**THIS HONORABLE COURT SHOULD NOT SUSPEND MY LICENSE TO PROTECT THE PUBLIC, AND SUGGEST SANCTIONS FOR MY FAILURE TO COMPLY WITH THE REQUIREMENTS OF THE RULES OF PROFESSIONAL CONDUCT BECAUSE: (A) MY HISTORY IN THE PRACTICE OF LAW ESTABLISHES THAT I HAVE COMPLIED WITH THE ETHICAL REQUIREMENTS SET FORTH BY THIS COURT WITH THE EXCEPTION OF ISOLATED INSTANCES OF LESS SERIOUS INFRACTION; (B) I HAVE ACKNOWLEDGED MY VIOLATION OF APPLICABLE RULES IN THE CASE OF MCCLELLAND AND MR. RITTER, AND MY UNINTENTIONAL ACTIONS OF FAILURE TO COMPLY WITH THE REQUIREMENTS OF THE RULES OF PROFESSIONAL CONDUCT WILL NOT OCCUR IN THE FUTURE; THEREFORE, THERE IS NO EVIDENCE THAT THERE IS DANGER TO THE PUBLIC AND/OR TO MY CURRENT, AND FUTURE CLIENTS. MY ACTIONS WERE NOT INTENTIONAL, AND WILL NOT BE REPEATED.**

## **ARGUMENT**

### **I.**

**I ADMIT TO REPRESENTING DAUGHTER IN HER ABUSE OF PROCESS CLAIM AGAINST MR. KRUSE ON A CONTINGENCY FEE BASIS AND THAT I FAILED TO COMMUNICATE TO THE BASIS OR RATE OF THE FEE AND EXPENSES FOR WHICH SHE WOULD BE RESPONSIBLE. I ALSO ADMIT THAT I FAILED TO PROCEDURE THE CONTINGENCY FEE AGREEMENT IN WRITING AND THEREFORE I VIOLATED RULE 4-1.5. I FURTHER STATE THAT IT MY NOT MY INTENTION TO VIOLATE ANY RULES AND I GOT CAUGHT UP IN THE CASE AND DID NOT WORRY ABOUT THE FEE I WOULD POTENTIALLY BE RECEIVING.**

As set forth in my response to the inquiry by the Office of the Chief Disciplinary Counsel and my correspondence' to the Chief Disciplinary Counsel and the Office of the Special Counsel for the Informant, I have regretfully violated Rule 4-1.5 and I have consistently acknowledged my responsibility for the McClelland Matter.

Since my violation the said rules, I have consistently furnished all clients with a written statement concerning the terms of the engagement so as to reduce the possibility of misunderstanding as to fees and expenses. I continue to present a written contract to each client and begin my representation upon clients' executed agreement(s). All fee

agreements to each client is separated by contingency, hourly, and flat fee type of agreement and explained to each client prior to my representation.

On the McClelland Matter, I the Respondent admit to contacting Daughter, who I knew was represented by an attorney, without seeking Daughter's attorney's authorization after I was retained by the Father to defend against her petition to set aside Father's foreclosure action. I realize and regret that by that conduct, I violated Rule 4-4.2 (communication with person represented by counsel).

In representing a client, I the lawyer and Respondent herein, shall never communicate about the subject of the representation with a person a lawyer knows to be represented by another lawyer in the matter, unless I have the consent of the other lawyer or I am authorized to do so by law or a court order as required by Rule 4-4.2.

**ARGUMENT**

**II.**

**IN COUNT I, I THE RESPONDENT REGRETFULLY VIOLATED RULES 4-1.7 AND 4-1.9 BY ENGAGING IN A CONFLICT OF INTEREST BETWEEN SUCCESSIVE CLIENTS IN THAT (A) I REPRESENTED BOTH DAUGHTER AND FATHER AT TIMES WHEN THEIR INTERESTS WERE DIRECTLY ADVERSE; AND (B) I REPRESENTED DAUGHTER AFTER HAVING REPRESENTING FATHER IN A SUBSTANTIALLY RELATED MATTER WHERE DAUGHTER'S INTEREST WERE MATERIALLY ADVERSE TO THOSE OF FATHER; IN COUNT II, I REGRETFULLY AND UNINTENTIONALLY VIOLATED RULE 4-1.7 BY ENGAGING IN A CONFLICT OF INTEREST BETWEEN SUCCESSIVE CLIENTS IN THAT (C) I REPRESENTED MR. RITTER AT A TIME WHEN I DID NOT REALIZE MY REPRESENTATION OF MR. RITTER HAD A SIGNIFICANT RISK AND WOULD BE MATERIALLY LIMITED.**

**Count I (McClelland)**

I, the Respondent, admit to being retained by Daughter to file suit against Mr. Kruse for abuse of process after I had already been retained by Father to defend against

Daughter's petition to set aside his foreclosure action. While I represented Daughter in that action she was always with her Father (Father herein) during all negotiations and discussion of the case and in fact the Father paid any legal fees that were paid. I subsequently discontinued representation of the Daughter but continued to represent Father over issues relating to the recovery of money that was due to Father from Daughter for a property that Father had sold to the Daughter which was being used as a bar. To further complicate the matter, there was a fire in the bar, which resulted in a loss and there was an issue regarding whether or not the insurance company would in fact pay for the loss. I did represent the Father against the insurance company to recover the moneys' from the loss on the property due to the fire, which in fact the Father owned. At this point, the Daughter filed an entry as a adverse party claiming that she had the ownership rights and any recovery under the fire policy should go to her. The Daughter also filed a Motion to have my representation to Father disqualified due to a conflict of interest, because I previously represented her. The issue was brought up before a Civil Judge in Marion County, Missouri, namely Honorable Judge Robert M. Clayton, II., and Judge Clayton issued a ruling that there was no conflict of interest in this case and that could continue representing the Father. I continued to represent the Father until the case was wrapped up. After reviewing the ethical rules, I believe that it was improper for me to continue represent Father, after I previously

represented Daughter, and I should have withdrawn from the case. There was no adverse financial consequences to Daughter and no judgment was ever corrected against her; in fact, all judgments were set aside in a subsequent bankruptcy, which Daughter filed. I do admit the allegations that were brought up against me by the Committee which caused me to violate Rule 4-1.7 and Rule 4-1.9 and I respectfully ask that any sanctions be tempered by my admission.

Count II (Ritter)

I, the Respondent, herein do admit that I agreed to represent Mr. Ritter as his attorney in the Cottleville Municipal Division prior to my realization that it would be a conflict of interest because the Cottleville Municipal Division is the very same court in which I was a provisional municipal judge. Furthermore, I failed to obtain a waiver for the Conflict from Mr. Ritter or the municipality. By that conduct, I admit to violating Rule 4-1.7 (conflict of interest: current clients).

Mr. Ritter came into my office to retain my services and after discussing his issue, I then told him we could probably get it resolved easily. I again at this point did not realize the conflict of interest my representation could cause. I made several trips to the City of Cottleville trying to resolve Mr. Ritter's issue. Unfortunately, I was unable to get resolved and I was informed that since I was serving in the capacity of a conflict judge that further representation of Mr. Ritter would be impossible and would be

considered as a conflict. After reviewing that information, I immediately notified Mr. Ritter and advised him that I would have to withdraw from representing him. I then filed my Motion to Withdraw.

**ARGUMENT**

**III.**

**I THE RESPONDENT ACKNOWLEDGE THAT I AM SUBJECT TO DISCIPLINE FOR CERTAIN VIOLATIONS OF THE RULES OF THE PROFESSIONAL CONDUCT AND RESPECTFULLY ASK THIS COURT NOT TO SUSPEND MY LICENSE TO PROTECT THE PUBLIC BECAUSE:**

- (A) I ACKNOWLEDGED MY VIOLATION OF APPLICABLE RULES IN TRUST FUND ISSUE AS WELL AS THE MCCLELLAND AND MR. RITTER MATTERS;**
- (B) WITH THAT ACKNOWLEDGMENT, I WILL NOT BE BRAKING ANY RULES INTENTIONALLY;**
- (C) MY ACTIONS WERE NOT INTENTIONAL;**
- (D) NO ONE WAS INJURED DUE TO MY ACTIONS;**
- (E) THERE IS NO EVIDENCE THAT THERE IS ANY DANGER TO THE PUBLIC;**
- (F) IN THIS COURT THE DISCIPLINARY HEARING PANEL APPROVED A STIPULATION, THE PARTIES' FILED THE COMPLETE RECORD, THE PARTIES' FULLY BRIEFED AND ARGUED SAID CAUSE, AND THE PARTIES HAVING**

**AGREED THAT A PUBLIC REPRIMAND IS THE  
APPROPRIATE SANCTION.**

### **CONCLUSION**

I, the Respondent, ask this Honorable Court to accept the parties' stipulation and the Panel's Recommendation, and to enter the following Order:

WHEREAS, in this Court the Disciplinary Hearing Panel approved a stipulation, the parties' filed the complete record, the parties' fully briefed and argued said cause , and the parties having agreed that a Public Reprimand is the appropriate sanction.

I, the Respondent, have been licensed to practice law by this Court approximately 37 years. At times the service that I have provided to the bench and the bar have been highly commendable. Meanwhile, I admit violations of the Rules of Professional Conduct. I understand that the kind and duration of discipline is within the sound discretion of this Court and I do not presume to this Court how it should exercise its discretion in this matter. I agree to the fees pursuant to Rule 5.19(h) in the amount of \$750 payable to the Clerk of this Court to the credit of the Advisory Committee Fund taxed to me.

Respectfully submitted,

LAW OFFICES OF

FRANK A. CONARD, P.C.

By: /s/ **Frank A. Conard**

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 16<sup>th</sup> day of September, 2013, a true and correct copy of the foregoing was served via the electronic filing system pursuant to Rule 103.08; and forwarded to the following parties:

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By: /s/ **Frank A. Conard**  
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**CERTIFICATION: RULE 84.06(c)**

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitation contained in Rule 86.06(b);
3. Contains 3098 words, according to Microsoft Word, which is the word processing system used to prepare this brief, and;

4. The Norton Antivirus Software was used to scan the document for viruses and it is virus free.

By: /s/ **Frank A. Conard**  
Frank A. Conard